

12/04 (A0243)

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 22 2008 2

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

SUE BEITIA, CLERK

United States District Court		District	HONOLULU, HAWAII
Name (under which you were convicted): JOSEPH PAJARDO		Docket or Case No.: 01-00160-0450M	
Place of Confinement: F.C.I. ATLANTA		Prisoner No.: 88110-022	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) JOSEPH PAJARDO	

MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII
- (b) Criminal docket or case number (if you know): CR-01-00160-4-SOM
- (a) Date of the judgment of conviction (if you know): APRIL 21, 2001
- (b) Date of sentencing: MARCH 29, 2004
- Length of sentence: 215 MONTHS
- Nature of crime (all counts): (4) COUNTS TOTAL 21 U.S.C. 846; 21 U.S.C. 843(B); 21 U.S.C. 841(A)(1) AND 18 U.S.C. SECTION 2 (CONSPIRACY TO KNOWINGLY AND INTENTIONALLY DISTRIBUTE AND POSSESSION W/INTENT TO DISTRIBUTE MORE THAN (50) GRAMS OF METH; USE OF TELEPHONE TO FACILITATE CONSPIRACY TO DISTRIBUTE MORE THAN (50) GRAMS OF CRYSTAL METH; AND POSSESSION W/INTENT TO DISTRIBUTE ABOUT (4) POUNDS OF CRYSTAL METH.
- (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? N/A
- If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐ N/A

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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐ N/A
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:

(a) Name of court: U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

(b) Docket or case number (if you know): 04-10230

(c) Result: DISMISSED IN PART; REMANDED IN PART

(d) Date of result (if you know): JAN. 9, 2006 (SENTENCE REDUCTION [197 MONTHS])

(e) Citation to the case (if you know): UNKNOWN

(f) Grounds raised: VIOLATION OF U.S. v. BOOKER (DRUG AMOUNTS & FIREARM POSSESSION NOT ADMITTED NOR PROVED BEYOND REASONABLE DOUBT; AND DISTRICT COURT ERRED IN DENYING MOTION FOR DOWNWARD DEPARTURE.

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): A

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(4) Nature of the proceeding: _____

(5) Grounds raised: _____

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: _____

N/A

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: _____

N/A

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ N/A

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: DEFENSE COUNSEL NEGLECTED ADVISING DEFENDANT AND DEFENDANT DID NOT KNOW.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
ATTORNEY DID NOTHING TO ASSIST DEFENDANT IN ANY MITIGATING DEFENSE.

ATTORNEY'S LACK OF RULE 11 OBJECTION.

LACK OF ADVERSARIAL DEFENSE.

DEFENSE ATTORNEY'S COMPETENCE IN EFFECTIVE DEFENSE.
(MOTION FOR DISCOVERY TO GAIN EVIDENCE SUBMITTABLE TO THIS COURT.)

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: SAME LEGAL COUNSEL FOR APPEAL. DEFENSE COUNSEL NEVER ADVISED AS TO AVAILABILITY.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

N/A

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Docket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: DEFENSE COUNSEL INEFFECTIVENESS AND LACK OF DEFENDANT'S LEGAL KNOWLEDGE.

GROUND TWO: TITLE 18 IS UNCONSTITUTIONAL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

CONGRESSIONAL RECORDS SHOW CONGRESS CONDUCTING TITLE 18 BUSINESS WHILE OUT OF SESSION & WITHOUT A 'QUORUM' OF ITS' MEMBERS.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒(2) If you did not raise this issue in your direct appeal, explain why: INEFFECTIVE ASSISTANCE OF COUNSEL & DEFENDANT LACK OF LEGAL KNOWLEDGE

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/AName and location of the court where the motion or petition was filed: A

Docket or case number (if you know): _____

Date of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): _____

Date of the court's decision: AResult (attach a copy of the court's opinion or order, if available): N/A

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: DEFENSE COUNSEL INEFFECTIVENESS AND DEFENDANT'S LACK OF LEGAL KNOWLEDGE.

GROUND THREE: VIOLATION OF F.R.C.P. RULE 11

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
NECESSITY FOR PROPER COURTROOM COLLOQUY FOR DEFENDANT NOT PERFORMED.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: INEFFECTIVE ASSISTANCE OF COUNSEL & DEFENDANT LACK OF LEGAL KNOWLEDGE

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): _____

Date of the court's decision: A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): A

Date of the court's decision: A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: DEFENSE COUNSEL INEFFECTIVENESS AND DEFENDANT'S LACK OF LEGAL KNOWLEDGE.

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

A

Docket or case number (if you know):

N/A

Date of the court's decision:

A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

A

Docket or case number (if you know):

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: UNCONSTITUTIONALITY OF TITLE 18, &
F.R.C.P. RULE 11.

DEFENSE ATTORNEY'S INEFFECTIVENESS & DEFENDANT'S
LACK OF LEGAL KNOWLEDGE.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: JERRY WILSON ADDRESS NOT KNOWN.

(b) At arraignment and plea: GLENN CHOY 735 BISHOP ST. SUITE
322 HONOLULU, HAWAII 96813

(c) At trial: _____

N/A

(d) At sentencing: SAME AS AT ARRAIGNMENT AND
PLEA.

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(e) On appeal: SAME AS ABOVE

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐ N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief: A CORRECTION OF SENTENCE TO A MORE APPLICABLE LOWER RANGE.

or any other relief to which movant may be entitled.

N/A
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 2-19-08 (month, date, year).

Executed (signed) on 2-18-08 (date).

[Signature]
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

* * * * *